

# Exhibit

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**Joel B. Rothman**  
Board Certified in Intellectual Property Law  
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June 11, 2020

**VIA EMAIL: contact@herobuildsolutions.com**

Mr. Saeid Beyrami  
Hero Build Solutions LLC  
3225 Shallowford Rd  
Building 1000  
Marietta, GA 30062

**Re: Howarth v. Hero Build Solutions LLC**  
**Our File No.: 00338-0037**

Dear Mr. Beyrami,

We are a law firm making a claim on behalf of our client. We know that this is reaching you during a difficult and trying time and that you may have more pressing concerns. We appreciate that responding to this letter may not be your priority. However, we must receive a response from you so that we know that you are taking this matter seriously, even if you need more time to hire a lawyer or report this claim to your insurance carrier. If we hear from you then we can work with you to understand your position and resolve our client's claim. Please respond to us.

We write on behalf of our client Morgan Howarth, a photographer, for purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Please provide this letter to your general liability insurance carriers or other providers of insurance that may cover this claim.

*Morgan Howarth ("Howarth")*

Our client is an experienced professional photographer who makes a living from photography. Based in the Washington D.C. area, Howarth has been a photographer for over 25 years and focuses on interior and architecture work. His rich and illustrative style brings architecture to life by combining a multitude of separately lit images into one perfect shot. Morgan has worked as a photographer for a multitude of national clients including Timex, Sears Catalog, The Lenox Hotel, Cole Haan Shoes, GH Bass Shoes, Timberland Shoe, CBS, and Home & Design Magazine, and has been exposed to

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many beautiful people and places throughout his career. However, he still considers the best part of any assignment to be the client's final "Wow!"

Howarth uses a combination of tungsten, daylight, and strobe light to create the best possible natural looking light to suit the needs of each room or scene. This process takes several different exposures and lighting set-ups per image which are then combined into one Hi-Res image.

Howarth retains all copyrights to his photographs. Howarth licenses his copyrighted Works, such as the ones in this case, for commercial use.

In 2014, Howarth created the images, hereinafter referred to as the "Works."

Copyright Title	Registration Number	Registration Issue Date
5519_Center_Mast_Bath_1	VA 1-958-957	8/29/2014
8608_Stirrup_Kitchen_2_F	VA 2-013-533	1/26/2016
8608_Stirrup_Kitchen_3_F	VA 2-013-553	1/26/2016
8608_Stirrup_Kitchen_1_F	VA 2-013-553	1/26/2016
5519_Center_Mast_Bath_3	VA 1-958-957	8/29/2014
5519_Master_Bath_4_Win	VA 1-958-957	8/29/2014

The Works at issue are shown below.

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5519\_Center\_Mast\_Bath\_3\_F



5519\_Master\_Bath\_4\_Windows\_F



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5519\_Center\_Mast\_Bath\_1



8608\_Stirrup\_Kitchen\_1\_F



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8608\_Stirrup\_Kitchen\_2\_F



8608\_Stirrup\_Kitchen\_3\_F



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Howarth registered the Works with the Register of Copyrights on August 29, 2014 and January 26, 2016 and was assigned the registration numbers VA 1-958-957 and VA 2-013-957, respectively, copies of which are enclosed.

*Infringement by Hero Build Solutions LLC ("HBS")*

The infringement at issue was identified on March 9, 2020. We have enclosed contemporaneous evidence of the infringement by HBS.

You have employed our client's Works in at least the manner indicated in the evidence attached. Your unauthorized use commenced on at least the date indicated above. You are fully aware that the Works you used are our client's Works. No one from your company ever sought a license from our client to use the Works for any purpose.

You have copied, displayed and distributed our client's Works without permission, license or consent. The use of a creator's photographic image without written consent or license violates the United States Code, Title 17, and The Copyright Act. The Copyright Act provides for entry of an injunction directing removal of the offending materials pending litigation. This letter shall serve as formal notice that you immediately cease and desist all unauthorized uses of our client's Works. Any such further uses shall be at your peril.

If you possess a contract, license, agreement or writing on which you will rely for authorization of your use of our client's Works, please provide us with this evidence so we may avoid further controversy or litigation. Otherwise, we will be forced to assume that your use violated the law.

*Damages*

Copyright law provides several different elements of compensation to Howarth when a work is infringed or altered. Section 504 permits Howarth to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages," or statutory damages of up to \$150,000 per work infringed if the registration predicated the infringement.

Howarth can present both damages theories to the jury and select the higher award any time prior to entry of judgment.

Academic studies have demonstrated that the use of good quality photographs more effectively market and advertise products and drive sales. Howarth's photographs are of the highest quality. Howarth's photographs are also scarce since he is one of the only sources of such quality photographs.

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Howarth's damages are not limited to what he would have agreed to license the Works for prior to the infringement. Rather, Howarth's actual damages will be measured by the fair market value of the photograph considering HBS's use to sell and promote its business. Howarth's actual damages must be measured in light of HBS's use of Howarth's high quality and unique Works.

This is consistent with federal courts' approach to broadly construing the term "actual damages" to favor victims of infringement. See, e.g., *Davis v. Gap, Inc.*, 246 F.3d 152, 164 (2d Cir. 2001). The fair market value approach for calculating damages is an accepted approach to valuing the defendants' uses of photographs. See *Leonard v. Stemtech Int'l, Inc.*, Nos. 15-3198, 15-3247, 2016 U.S. App. LEXIS 15565 (3d Cir. Aug. 24, 2016). In addition, Howarth can offer evidence of the actual cost to take the photograph infringed on a time and materials basis.

Section 504 of the Copyright Act permits Howarth to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages." Therefore, Howarth will also be entitled to HBS's profits from the infringement, based upon the revenue HBS earned in connection with the use of Howarth's Works.

Alternatively, Howarth could seek statutory damages for infringement in an amount of up to \$30,000 per work infringed if the registration predicated the infringement. There is also the possibility that a judge or jury could determine that HBS's infringement was willful. If HBS's infringement was shown to be willful, the statutory damage award would increase to an amount up to \$150,000 per work infringed.

#### *Demand*

In order to determine how to proceed, please provide us with information and documents showing:

1. the full nature and extent of the use of our client's Works, in any and all formats;
2. representative copies in any and all tangible form and media in which our client's Works were incorporated or employed; and
3. the source of the Works.

Upon receipt of this information we will consider and determine an appropriate amount required to be paid to our client in compensation.

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Please carefully consider this letter and the associated exhibits and provide them to your attorneys and insurance carriers. If we do not receive a response from you or a representative by June 25, 2020, we will take further steps to protect our client's rights. We look forward to your prompt response.

Sincerely,

**SRIPLAW**



Joel B. Rothman

JBR/bmb  
Enclosures

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# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

A handwritten signature in black ink that reads "Maria A. Pallante".

United States Register of Copyrights and Director

## Registration Number

**VA 2-013-553**

## Effective Date of Registration:

January 26, 2016

## Title

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**Title of Work:** Group Registration Photos, Howarth, published Sept 25, 2015 to Dec 1, 2015  
(77) images

## Completion/Publication

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**Year of Completion:** 2015  
**Date of 1st Publication:** September 25, 2015  
**Nation of 1<sup>st</sup> Publication:** United States

## Author

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- **Author:** Morgan Howarth
- Author Created:** photograph
- Work made for hire:** No
- Citizen of:** United States
- Domiciled in:** United States
- Year Born:** 1956

## Copyright Claimant

---

**Copyright Claimant:** Morgan Howarth  
13520 ,Norwick Place, Gainesville, VA, 20155

## Rights and Permissions

---

**Name:** Morgan Howarth  
**Email:** morgan@morganhowarth.com  
**Telephone:** (240)377-1766  
**Address:** 13520 ,Norwick Place  
Gainesville, VA 20155 United States

## Certification

---

**Name:** Morgan Howarth  
**Date:** January 26, 2016

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Register of Copyrights, United States of America

## Registration Number

**VA 1-958-957**

## Effective Date of Registration:

August 29, 2014

## Title

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**Title of Work:** Group Registration Photos, Howarth, published Jan. 2, 2014 to Aug. 20, 2014  
(304) images

## Completion/Publication

---

**Year of Completion:** 1997  
**Date of 1st Publication:** January 02, 2014  
**Nation of 1<sup>st</sup> Publication:** United States

## Author

---

- **Author:** Morgan Howarth
- Author Created:** photograph
- Work made for hire:** No
- Citizen of:** United States
- Domiciled in:** United States
- Year Born:** 1956

## Copyright Claimant

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**Name:** Morgan Howarth  
**Email:** morgan@morganhowarth.com  
**Telephone:** (240)377-1766  
**Address:** 13520 ,Norwick Place  
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## Certification

---

**Name:** Morgan Howarth  
**Date:** June 18, 2015



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- Bathroom Remodeling
- Basement Finishing
- Furnishing

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# Kitchen Remodeling

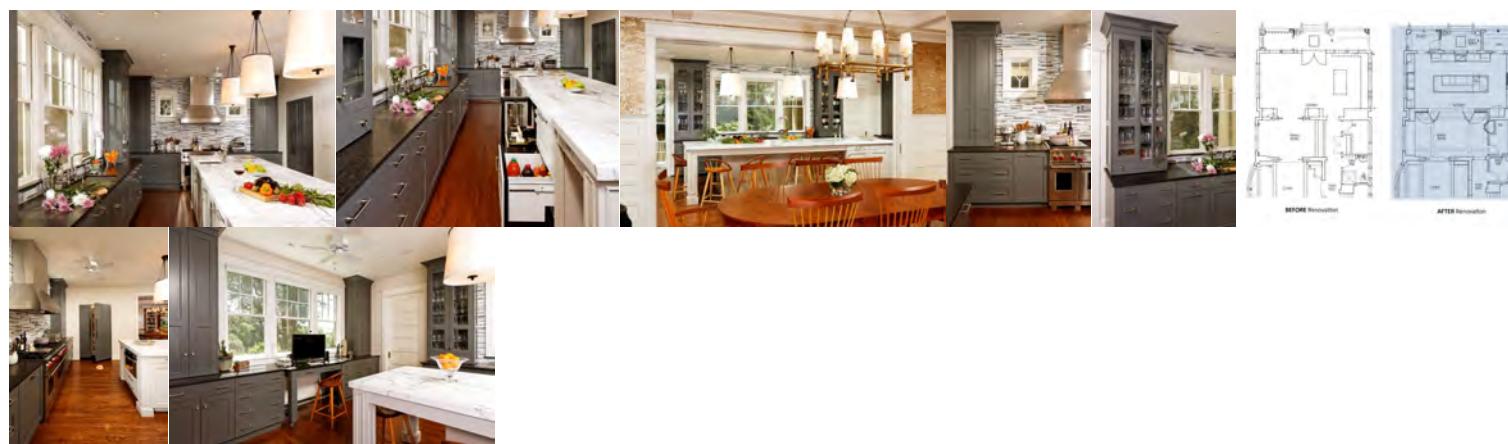
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## Alpharetta



## Johns Creek



# Bathroom Remodeling

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To set an appointment please contact us

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